

HB0455/176889/1

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 455

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “Delegate Kelly” and substitute “Delegates Kelly, Bagnall, Belcastro, Bhandari, Carr, Charles, Chisholm, Cullison, Hill, Johnson, Kerr, Kipke, Krebs, R. Lewis, Morgan, Pena–Melnik, Pendergrass, Reilly, Rosenberg, Saab, Szeliga, and K. Young”; in line 2, strike “Coverage for”; in line 3, strike “Treatment Criteria” and substitute “Reports on Nonquantitative Treatment Limitations and Data”; in line 4, strike “a”; in lines 4 and 7, in each instance, strike “date each year” and substitute “dates”; in line 6, after “Act,” insert “requiring certain carriers to identify a certain number of health benefit plans that meet certain criteria and conduct a certain comparative analysis;”; in line 7, strike the first “a”; in line 11, strike “made”; in line 12, after “information,” insert “authorizing certain carriers to submit a certain request to the Commissioner that the disclosure of certain information be denied under certain authority of the Public Information Act; requiring the Commissioner to review certain requests and notify a carrier if certain information will be disclosed; requiring a carrier to disclose certain information to certain members;”; in line 14, after “law” insert “in a certain manner before issuing a certain order”; in the same line, strike “require” and substitute “allow”; in the same line, after “to” insert “submit a certain plan or”; in lines 14 and 15, strike “under certain circumstances; requiring” and substitute “within a certain period of time; authorizing”; strike beginning with “requiring” in line 15 down through “fund;” in line 16; strike beginning with “establishing” in line 18 down through “carrier;” in line 29; and strike beginning with “providing” in line 29 down through “the” in line 30.

On page 2, in line 1, strike “application of certain provisions of this Act;” and substitute “specifying that the form the Commissioner is required to develop is a certain tool; requiring the Commissioner to submit certain reports to certain committees of the General Assembly on or before certain dates; providing for the termination of this Act;”;

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in line 5, strike “and 15–145”; and strike in their entirety lines 8 through 27, inclusive.

AMENDMENT NO. 2

On page 4, in line 15, strike “EACH YEAR, BEGINNING IN 2021” and substitute “, 2022, AND MARCH 1, 2024”; in line 16, after “SHALL” insert “:

(I) IDENTIFY THE FIVE HEALTH BENEFIT PLANS WITH THE HIGHEST ENROLLMENT FOR EACH PRODUCT OFFERED BY THE CARRIER IN THE INDIVIDUAL, SMALL, AND LARGE GROUP MARKETS; AND

(II)”;

in line 20, after “SHALL” insert “INCLUDE THE FOLLOWING INFORMATION FOR THE HEALTH BENEFIT PLANS IDENTIFIED UNDER ITEM (1)(I) OF THIS SUBSECTION”; after line 20, insert:

“(I) A DESCRIPTION OF THE PROCESS USED TO DEVELOP OR SELECT THE MEDICAL NECESSITY CRITERIA FOR MENTAL HEALTH BENEFITS AND SUBSTANCE USE DISORDER BENEFITS AND THE PROCESS USED TO DEVELOP OR SELECT THE MEDICAL NECESSITY CRITERIA FOR MEDICAL AND SURGICAL BENEFITS;

(II) FOR EACH PARITY ACT CLASSIFICATION, IDENTIFICATION OF NONQUANTITATIVE TREATMENT LIMITATIONS THAT ARE APPLIED TO MENTAL HEALTH BENEFITS AND SUBSTANCE USE DISORDER BENEFITS AND MEDICAL AND SURGICAL BENEFITS;

(III) IDENTIFICATION OF THE DESCRIPTION OF THE NONQUANTITATIVE TREATMENT LIMITATIONS IDENTIFIED UNDER ITEM (II) OF

THIS PARAGRAPH IN DOCUMENTS AND INSTRUMENTS UNDER WHICH THE PLAN IS ESTABLISHED OR OPERATED; AND

(IV) THE RESULTS OF THE COMPARATIVE ANALYSIS AS DESCRIBED UNDER SUBSECTIONS (D) AND (E) OF THIS SECTION.

(D) (1) A CARRIER SUBJECT TO THIS SECTION SHALL CONDUCT A COMPARATIVE ANALYSIS FOR THE NONQUANTITATIVE TREATMENT LIMITATIONS IDENTIFIED UNDER SUBSECTION (C)(2)(II) OF THIS SECTION AS NONQUANTITATIVE TREATMENT LIMITATIONS ARE:

(I) WRITTEN; AND

(II) IN OPERATION.

(2) THE COMPARATIVE ANALYSIS OF THE NONQUANTITATIVE TREATMENT LIMITATIONS IDENTIFIED UNDER SUBSECTION (C)(2)(II) OF THIS SECTION SHALL DEMONSTRATE THAT THE PROCESSES, STRATEGIES, EVIDENTIARY STANDARDS, OR OTHER FACTORS USED IN APPLYING THE MEDICAL NECESSITY CRITERIA AND EACH NONQUANTITATIVE TREATMENT LIMITATION TO MENTAL HEALTH BENEFITS AND SUBSTANCE USE DISORDER BENEFITS IN EACH PARITY ACT CLASSIFICATION ARE COMPARABLE TO, AND ARE APPLIED NO MORE STRINGENTLY THAN, THE PROCESSES, STRATEGIES, EVIDENTIARY STANDARDS, OR OTHER FACTORS USED IN APPLYING THE MEDICAL NECESSITY CRITERIA AND EACH NONQUANTITATIVE TREATMENT LIMITATION TO MEDICAL AND SURGICAL BENEFITS WITHIN THE SAME PARITY ACT CLASSIFICATION.

(E) IN PROVIDING THE ANALYSIS REQUIRED UNDER SUBSECTION (D) OF THIS SECTION, A CARRIER SHALL:

(Over)

(1) IDENTIFY THE FACTORS USED TO DETERMINE THAT A NONQUANTITATIVE TREATMENT LIMITATION WILL APPLY TO A BENEFIT, INCLUDING:

(I) THE SOURCES FOR THE FACTORS;

(II) THE FACTORS THAT WERE CONSIDERED BUT REJECTED;

AND

(III) IF A FACTOR WAS GIVEN MORE WEIGHT THAN ANOTHER, THE REASON FOR THE DIFFERENCE IN WEIGHTING;

(2) IDENTIFY AND DEFINE THE SPECIFIC EVIDENTIARY STANDARDS USED TO DEFINE THE FACTORS AND ANY OTHER EVIDENCE RELIED ON IN DESIGNING EACH NONQUANTITATIVE TREATMENT LIMITATION;

(3) INCLUDE THE RESULTS OF THE AUDITS, REVIEWS, AND ANALYSES PERFORMED ON THE NONQUANTITATIVE TREATMENT LIMITATIONS IDENTIFIED UNDER SUBSECTION (C)(2)(II) OF THIS SECTION TO CONDUCT THE ANALYSIS REQUIRED UNDER SUBSECTION (D)(2) OF THIS SECTION FOR THE PLANS AS WRITTEN;

(4) INCLUDE THE RESULTS OF THE AUDITS, REVIEWS, AND ANALYSES PERFORMED ON THE NONQUANTITATIVE TREATMENT LIMITATIONS IDENTIFIED UNDER SUBSECTION (C)(2)(II) OF THIS SECTION TO CONDUCT THE ANALYSIS REQUIRED UNDER SUBSECTION (D)(2) OF THIS SECTION FOR THE PLANS AS IN OPERATION;

(5) IDENTIFY THE MEASURES USED TO ENSURE COMPARABLE DESIGN AND APPLICATION OF NONQUANTITATIVE TREATMENT LIMITATIONS THAT ARE IMPLEMENTED BY THE CARRIER AND ANY ENTITY DELEGATED BY THE CARRIER TO MANAGE MENTAL HEALTH BENEFITS, SUBSTANCE USE DISORDER BENEFITS, OR MEDICAL/SURGICAL BENEFITS ON BEHALF OF THE CARRIER;

(6) DISCLOSE THE SPECIFIC FINDINGS AND CONCLUSIONS REACHED BY THE CARRIER THAT INDICATE THAT THE HEALTH BENEFIT PLAN IS IN COMPLIANCE WITH THIS SECTION AND THE PARITY ACT AND ITS IMPLEMENTING REGULATIONS, INCLUDING 45 C.F.R. 146.136 AND 29 C.F.R. 2590.712 AND ANY OTHER RELATED FEDERAL REGULATIONS FOUND IN THE CODE OF FEDERAL REGULATIONS; AND

On pages 4 through 6, strike in their entirety the lines beginning with line 21 on page 4 through line 30 on page 6, inclusive.

On page 6, in lines 31 and 35, strike “(VIII)” and “1.”, respectively, and substitute “(7)” and “(I)”, respectively.

AMENDMENT NO. 3

On page 7, in lines 2 and 3, strike “2.” and “3.”, respectively, and substitute “(II)” and “(III)”, respectively; in line 9, strike “(D)” and substitute “(F)”; in the same line, strike “EACH YEAR, BEGINNING IN 2021” and substitute “, **2022, AND MARCH 1, 2024**”; in line 10, after “REPORT” insert “**FOR THE HEALTH BENEFIT PLANS IDENTIFIED UNDER SUBSECTION (C)(1)(I) OF THIS SECTION**”; in line 11, strike “CARRIER’S” and substitute “**FOLLOWING**”; in lines 13 and 14, strike “, INCLUDING”; and after line 14, insert:

“(1) THE FREQUENCY, REPORTED BY NUMBER AND RATE, WITH WHICH THE HEALTH BENEFIT PLAN RECEIVED, APPROVED, AND DENIED PRIOR

AUTHORIZATION REQUESTS FOR MENTAL HEALTH BENEFITS, SUBSTANCE USE DISORDER BENEFITS, AND MEDICAL AND SURGICAL BENEFITS IN EACH PARITY ACT CLASSIFICATION DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR; AND

(2) THE NUMBER OF CLAIMS SUBMITTED FOR MENTAL HEALTH BENEFITS, SUBSTANCE USE DISORDER BENEFITS, AND MEDICAL AND SURGICAL BENEFITS IN EACH PARITY ACT CLASSIFICATION DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR AND THE NUMBER AND RATES OF, AND REASONS FOR, DENIAL OF CLAIMS.”.

On pages 7 through 9, strike in their entirety the lines beginning with line 15 on page 7 through line 27 on page 9, inclusive.

AMENDMENT NO. 4

On page 9, in line 28, strike “(E)” and substitute “(G)”; and in the same line, strike “(D)” and substitute “(F)”.

On page 10, in lines 6 and 7, strike “THE CARRIER’S CHIEF EXECUTIVE” and substitute “A CORPORATE”; strike beginning with “BE” in line 9 down through “(6)” in line 11; in line 12, after “FORM” insert “THAT REMOVES CONFIDENTIAL OR PROPRIETARY INFORMATION AND IS”; in the same line, after “COMMISSIONER” insert “IN ACCORDANCE WITH SUBSECTION (M)(2) OF THIS SECTION”; in line 13, strike “(7)” and substitute “(6)”; and after line 14, insert:

“(H) (1) A CARRIER SUBMITTING A REPORT UNDER SUBSECTIONS (C) AND (F) OF THIS SECTION MAY SUBMIT A WRITTEN REQUEST TO THE COMMISSIONER THAT DISCLOSURE OF SPECIFIC INFORMATION INCLUDED IN THE REPORT BE DENIED UNDER THE PUBLIC INFORMATION ACT AND, IF SUBMITTING A REQUEST, SHALL:

(I) IDENTIFY THE PARTICULAR INFORMATION THE DISCLOSURE OF WHICH THE CARRIER REQUESTS BE DENIED; AND

(II) CITE THE STATUTORY AUTHORITY UNDER THE PUBLIC INFORMATION ACT THAT AUTHORIZES DENIAL OF ACCESS TO THE INFORMATION.

(2) THE COMMISSIONER MAY REVIEW A REQUEST SUBMITTED UNDER PARAGRAPH (1) OF THIS SUBSECTION ON RECEIPT OF A REQUEST FOR ACCESS TO THE INFORMATION UNDER THE PUBLIC INFORMATION ACT.

(3) THE COMMISSIONER MAY NOTIFY THE CARRIER THAT SUBMITTED THE REQUEST UNDER PARAGRAPH (1) OF THIS SUBSECTION BEFORE GRANTING ACCESS TO INFORMATION THAT WAS THE SUBJECT OF THE REQUEST.

(4) A CARRIER SHALL DISCLOSE TO A MEMBER ON REQUEST ANY PLAN INFORMATION CONTAINED IN A REPORT THAT IS REQUIRED TO BE DISCLOSED TO THAT MEMBER UNDER FEDERAL OR STATE LAW.”;

in lines 15 and 17, strike “(F)” and “(D)”, respectively, and substitute “(I)” and “(F)”, respectively.

AMENDMENT NO. 5

On page 10, in line 19, after “CARRIER” insert “IN WRITING”; in line 20, strike “ACT;” and substitute “ACT BEFORE ISSUING AN ADMINISTRATIVE ORDER; AND”; strike in their entirety lines 21 through 29, inclusive, and substitute:

“(3) WITHIN 90 DAYS AFTER THE NOTICE OF NONCOMPLIANCE IS ISSUED, ALLOW THE CARRIER TO:

(Over)

(I) SUBMIT A COMPLIANCE PLAN TO THE ADMINISTRATION TO COMPLY WITH THE PARITY ACT; AND

(II) REPROCESS ANY CLAIMS THAT WERE IMPROPERLY DENIED, IN WHOLE OR IN PART, BECAUSE OF THE NONCOMPLIANCE.

(J) IF THE COMMISSIONER FINDS THAT THE CARRIER FAILED TO SUBMIT A COMPLETE REPORT REQUIRED UNDER SUBSECTION (C) OR (F) OF THIS SECTION, THE COMMISSIONER MAY IMPOSE ANY PENALTY OR TAKE ANY ACTION AS AUTHORIZED:

(1) FOR AN INSURER, NONPROFIT HEALTH SERVICE PLAN, OR ANY OTHER PERSON SUBJECT TO THIS SECTION, UNDER THIS ARTICLE; OR

(2) FOR A HEALTH MAINTENANCE ORGANIZATION, UNDER THIS ARTICLE OR THE HEALTH GENERAL ARTICLE.

(K) IF, AS A RESULT OF THE REVIEW REQUIRED UNDER PARAGRAPH (I)(1) OF THIS SECTION, THE COMMISSIONER FINDS THAT THE CARRIER FAILED TO COMPLY WITH THE PROVISIONS OF THE PARITY ACT, AND DID NOT SUBMIT A COMPLIANCE PLAN TO ADEQUATELY CORRECT THE NONCOMPLIANCE, THE COMMISSIONER MAY:

(1) ISSUE AN ADMINISTRATIVE ORDER THAT REQUIRES:

(I) THE CARRIER OR AN ENTITY DELEGATED BY THE CARRIER TO CEASE THE NONCOMPLIANT CONDUCT OR PRACTICE;

(II) THE CARRIER TO PROVIDE A PAYMENT THAT HAS BEEN DENIED IMPROPERLY BECAUSE OF THE NONCOMPLIANCE; OR

(2) IMPOSE ANY PENALTY OR TAKE ANY ACTION AS AUTHORIZED:

(I) FOR AN INSURER, NONPROFIT HEALTH SERVICE PLAN, OR ANY OTHER PERSON SUBJECT TO THIS SECTION, UNDER THIS ARTICLE; OR

(II) FOR A HEALTH MAINTENANCE ORGANIZATION, UNDER THIS ARTICLE OR THE HEALTH GENERAL ARTICLE.

(L) IN DETERMINING AN APPROPRIATE PENALTY UNDER SUBSECTION (J) OR (K) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER THE LATE FILING OF A REPORT REQUIRED UNDER SUBSECTION (C) OR (F) OF THIS SECTION AND ANY PARITY VIOLATION TO BE A SERIOUS VIOLATION WITH A SIGNIFICANTLY DELETERIOUS EFFECT ON THE PUBLIC.”;

and strike line 30 in its entirety.

On page 11, strike in their entirety lines 1 through 11, inclusive; in lines 12, 17, and 18, strike “(H)”, “(E)(6)”, and “(I)”, respectively, and substitute “(M)”, “(G)(5)”, and “(N)”, respectively; in lines 12 and 18, in each instance, strike “2020” and substitute “2021”; in line 15, strike “(E)(1)” and substitute “(G)(1)”; in line 16, strike “WITH” and substitute “TO”; in the same line strike “REPORTS” and substitute “WEBSITES”; in line 20, after “SECTION” insert “, INCLUDING”; and strike beginning with “DATA” in line 21 down through “REPORTING” in line 22 and substitute “THE REPORTING REQUIREMENTS ESTABLISHED UNDER THIS SECTION”.

AMENDMENT NO. 6

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On pages 11 through 22, strike in their entirety the lines beginning with line 23 on page 11 through line 9 on page 22, inclusive, and substitute:

“SECTION 2. AND BE IT FURTHER ENACTED, That the standard form the Maryland Insurance Commissioner is required to develop under § 15-144(m)(1) of the Insurance Article, as enacted by Section 1 of this Act, for the report required under § 15-144(c) of the Insurance Article, as enacted by Section 1 of this Act, shall be the National Association of Insurance Commissioners’ Data Collection Tool for Mental Health Parity Analysis, Nonquantitative Treatment Limitations and any amendments by the Commissioner to the tool necessary to incorporate the requirements of § 15-144(c), (d), and (e) of the Insurance Article, as enacted by Section 1 of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That the Maryland Insurance Commissioner shall submit to the General Assembly an interim report on or before December 1, 2023, and a final report on or before December 1, 2025, in accordance with § 2-1257 of the State Government Article, that:

(1) summarize the findings of the Commissioner after reviewing the reports required under Section 1 of this Act; and

(2) make specific recommendations regarding:

(i) the information gained from the reports;

(ii) the value of and need for ongoing compliance and data reporting;

(iii) the frequency of reporting in subsequent years and whether to report on an annual or biennial basis; and

(iv) based on the carrier reports and other guidance from federal regulators and other states, any changes in the reporting and data requirements that

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should be implemented in subsequent years, including frequency and content and whether additional nonquantitative treatment limitations should be included in the reporting and data requirements.”.

On page 22, strike beginning with “, except” in line 10 down through “Act,” in line 11; and in line 11, after “2020.” insert “It shall remain in effect for a period of 6 years and, at the end of September 30, 2026, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.”.